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June 20, 1994

Via Messenger

Mr. William F. Caton
Acting Secretary,
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D. C. 20554

Re: **CC Docket No. 92-115**
Implementation of Sections 3(n) and 332
of the Communications Act
Regulatory Treatment of Mobile Services

Dear Mr. Caton:

Submitted herewith on behalf of SMR Systems, Inc. are an original plus five (5) copies of its Comments with respect to the above-referenced docket.

Kindly contact my office directly with any questions concerning this submission.

Respectfully submitted,

William J. Franklin
Attorney for SMR Systems, Inc.

Encs.
cc: SMR Systems, Inc.

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Revision of Part 22 of the Commission's rules governing the Public Mobile Services | ) | **CC Docket No. 92-115** |

To: The Commission

**FURTHER COMMENTS OF**
**SMR SYSTEMS INC.**

SMR Systems, Inc. ("SSI"), by its attorney and pursuant to Section 1.415(b) of the Commission's Rules, hereby files Comments with respect to the Further Notice of Proposed Rulemaking adopted in the above-captioned proceeding.[1/] These comments are restricted to the Commission's proposed revision of the rules applicable to the 931 MHz paging service. SSI generally supports the Commission's goal of updating Part 22 of the Rules, subject to specific improvements suggested herein.

**INTEREST OF SSI**

SSI is a licensee under Part 22 of the Commission's Rules, holding several PLMS licenses to provide paging and two-way mobile service in the Houston and Austin, Texas areas. SSI's principals have extensive experience in the mobile-radio business. SSI filed Comments with respect to the original Notice of

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[1/] Revision of Part 22, 9 FCC Rcd _____ (FCC 94-102, released May 20, 1994) (Further Notice of Proposed Rulemaking) ("FNPRM").

Proposed Rulemaking in this proceeding.[2/] Concurrently herewith, SSI is also filing Comments with respect to the Commission's Further Notice of Proposed Rulemaking in the CMRS proceeding.[3/] Accordingly, SSI is uniquely qualified to provide comments to the Commission on the proposed revisions to Part 22 as they affect the smaller carrier.

## I. SSI SUPPORTS THE COMMISSION'S PROPOSAL TO BREAK THE 931 MHz LICENSING BOTTLENECK BY REQUIRING ALL 931 MHz APPLICATIONS TO PROPOSE A SPECIFIC FREQUENCY; SPECIFIC CHANNEL AVAILABILITY INFORMATION IS NEEDED TO EXPLOIT THIS PROPOSAL.

The Commission made two proposals with respect to its regulation under Part 22 of the 931 MHz paging services. SSI supports one proposal, but has substantial reservations about the other.

First, the Commission proposed (FNPRM, ¶¶12-17) that applicants for 931 MHz stations be required to propose a specific frequency in their applications, and that pending applications must be amended to specify a frequency. The Commission has correctly recognized that its existing use of "generic-frequency" 931 MHz applications results in a regulatory bottleneck in current 931 MHz licensing. The proposed procedures (which are based on existing regulations applicable to other frequency bands) should resolve this bottleneck expeditiously.

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[2/] Revision of Part 22, 7 FCC Rcd 3658 (1992) (Notice of Proposed Rulemaking) ("NPRM").

[3/] Regulatory Treatment of Mobile Services, 9 FCC Rcd ____ (FCC 94-100, released May 20, 1994) (Further Notice of Proposed Rulemaking).

Smaller carriers suffer relatively more than larger ones when the Commission's licensing processes slow down. Each license is a greater portion of the smaller carrier's business, and the smaller carriers cannot afford the increased regulatory costs which result from licensing delay. SSI supports the Commission's proposal for applications to propose specific 931 MHz frequencies.

In adopting this proposal, however, the Commission must make special efforts to inform current and potential applicants of the availability of 931 MHz channels. As part of the "unraveling" of the current 931 MHz licensing mess after adopting of this proposal, the Commission must carefully purge its database of unconstructed stations and unrenewed 931 MHz licenses. Applicants will need this information in order to amend their applications to specify an available frequency.

Further, a second round of database cleaning will be required to purge the database of non-frequency-specific, unamended 931 MHz applications, as well as the 931 MHz applications dismissed when all cases of mutual exclusivity are resolved. The public interest is always well-served when applicants and licensees (especially those who are small businesses) can obtain accurate information regarding the Commission's licensing records.

## II. THE COMMISSION MUST MODIFY ITS PROPOSED DEFINITION OF "MAJOR AMENDMENT" AND "MODIFICATION TO AN EXISTING LICENSE" TO REFLECT EXISTING TECHNICAL AND COMMISSION PRACTICES.

Paragraph 18 of the FNPRM proposes a new definition of "major modification" amendments for common-carrier 931 MHz paging applications, i.e., an amendment is a major modification to an existing application only if (a) it is for the same frequency as currently proposed, and (b) if it involves a relocation, it proposes a new site 2 kilometers (1.6 miles)[4/] or less from the currently proposed site.

The FNPRM also proposes to apply this definition of "major modification" to determine when an application is a modification to an existing station, i.e., is not subject to the Commission's auction authority. The Commission proposes that a 931 MHz application is a modification to an existing station only if (a) it proposes new locations 2 kilometers (or 1.6 miles) or less from a previously authorized and fully operational base station licensed to the same licensee on the same frequency, (b) it to relocate an authorized site to a new location 2 kilometers (or 1.6 miles) or less from the current site, or (c) the application seeks a technical change that would not increase the service contour.

As a threshold matter, SSI supports the Commission's proposal to use the same criteria, subject to specific exceptions noted

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[4/] As a threshold matter, the Commission's kilometer-to-mile conversion is incorrect: 2 kilometers is 1.24 miles; 1.6 miles is roughly 2.6 kilometers. Thus, the Commission's proposal is internally inconsistent and requires clarification.

below, to determine major amendments and modifications to licensees. However, in several important respects, the specific proposals advanced by the Commission are far too rigid and do not serve the public interest.

First, the Commission's use of a 2-kilometer radius (or the 1.6 mile/2.6 kilometer radius) to determine when an application is a license modification is far too small. This will work a hardship on licensees, especially on smaller businesses who do not have the resources to develop new tower sites merely to maintain the 2- (or 2.6-) kilometer spacing. For each service, the Commission should use a distance roughly twice the expected reliable service contour for base station licensed at maximum height and power as the maximum distance under which a new application is deemed to be modifying an existing license.[5/]

This situation is one in which major-amendment and license-modification criteria should differ. For amendments, the Commission should keep the maximum relocation distance at 2 (or 2.6) kilometers, so that applicants cannot move their proposed sites without reappearing on public notice. However, modification applications will always appear on public notice, so this concern is irrelevant. In accord with existing Part 22 practice, the Commission's concern should be that the existing and proposed sites can be operated as an integrated system. This concern is

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[5/] For 931 MHz paging licensees, this distance would be 64 kilometers (40 miles).

met when the predicted, reliable service contours for the existing and proposed sites can touch.

Second, the Commission's "same licensee" criteria in determining when applications are proposing modifications to authorizations (rather than a new station) is too rigid. Currently, the Commission's Part 22 practice is to deem commonly owned stations (even if licensed to different entities) as the "same licensee" for the purpose of measuring composite service contours. The Commission carry this notion forward, such that stations which are operated by licensees under substantially common ownership or as part of an integrated communications system are deemed to belong to "the same licensee" for the purpose of determining when an application proposes a license modification.

Third, existing Section 22.23(g) contains several important exceptions to the general rules on when an amendment is a major modification. While all these should be carried forward, the following are the most important:

- 22.23(g)(2): When "[t]he amendment resolves frequency conflicts with other pending applications but does not create new or increased frequency conflicts."
- 22.23(g)(3): When "[t]he amendment reflects only a change in ownership and control found by the Commission to be in the public interest...", i.e., as a result of granted transfer or assignment application to an existing authorization.
- 22.23(g)(4): When "[t]he amendment reflects only a change in ownership or control which results from [a settlement] agreement under §22.29 whereby two or more applicants ... join in one or more of the existing applications and request dismissal of their other application(s)...."
- 22.23(g)(6): When "[t]he amendment does not create new or increased frequency conflicts, and is demonstrably necessi-

> tated by events which the applicant could not have foreseen at the time of filing, such as, for example ... the loss of transmitter or receiver site...."

Subsections 22.23(g)(2) and 22.23(g)(4) are required be carried forward into CMRS regulation by Section 309(j)(6)(E) of the Communications Act, which imposes on the Commission the continuing:

> [O]bligation in the public interest to continue to use engineering solutions, negotiation, ... and other means in order to avoid mutual exclusivity in application and licensing proceedings....

Thus, the Commission carry each of those exceptions forward for all CMRS applications.

Fourth, the Commission should continue to apply the existing practice with respect to Part 22 applications which permits two applicants to consent to accept harmful electrical interference which otherwise would render their applications mutually exclusive. This practice is also required by Section 309(j)(6)(E) of the Communications Act. A similar practice exists with respect to Part-90 800 MHz applicants and licensees, for whom the Commission will accept short-spacing by consent.

## CONCLUSION

Accordingly, SMR Systems Inc. respectfully requests that the Commission adopt its proposed revisions to Part 22 for 931 MHz licensing with the rule changes suggested herein.

Respectfully submitted,

**SMR SYSTEMS INC.**

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